



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

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MRA-11/#47906

**PRELIMINARY RECITALS**

Pursuant to a petition filed February 8, 2001, under Wis. Stat. §49.45(5) to review a decision by the Columbia County Dept. of Human Services to deny Medical Assistance (MA), a telephonic hearing was held on March 5, 2001, at Portage, Wisconsin. The record was held open for one week for the submission of exhibits to the Division of Hearings and Appeals.

The issue for determination is whether petitioner's assets may be allocated to his community spouse.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Representative:

Attorney Jeffrey P. Clark  
Lathrop & Clark  
108 Lodi Street  
111 N. Main Street  
P.O. Box 128  
Poynette, WI 53955

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Pam Waffle, ES Supervisor  
Columbia County Dept. Of Human Services  
711 E. Cook Street  
P.O. Box 136  
Portage, WI 53901

Gary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN 399-24-0702, CARES #7110991270) is a resident of Columbia County. He has been a resident at the Lodi Good Samaritan Center in Lodi, Wisconsin since November, 2000; his wife remains in the community.

2. On December 27, 2000, the petitioner's spouse filed an application for MA on behalf of her husband, seeking benefits retroactive to December 1, 2000. After compiling a summary of petitioner's income and assets, the county denied the application on December 28, 2000 because assets were over the MA asset eligibility limit. See Exhibit 3.
3. As of December, 2000, petitioner's monthly income included \$898 social security and a \$72.08 pension totaling \$970.08. As of January, 2001, this monthly income increased to \$999.08 due to an increase in Social Security. See Exhibit 20. The petitioner paid a Medigap premium of \$101.00 in December, 2000, which increased to \$112.00 as of January, 2001.
4. As of December, 2000, petitioner's wife's monthly income was \$430.50 social security and investment income of \$1,102.70 for a total of \$1,533.20. As of January, 2001, this monthly income increased to \$1,548.70 due to an increase in Social Security. See Exhibit 20.
5. The couple's countable assets generate monthly income of \$1,102.70. See Exhibits 4-20.
6. Total non-exempt assets as of December 28, 2000 were incorrectly determined by the county to be \$201,825.86 (during the hearing the county agency stipulated that the correct non-exempt asset total was \$195,715.02). See Exhibit 19. The couple's \$195,715.02 in assets are income producing. See Exhibits 4-20.
7. The county agency stipulated that the petitioner has an excess shelter allowance of \$298.50 which raised petitioner's minimum monthly needs allowance from \$1,875 to \$2,103 (for December, 2000) and to \$2,173.50 as of January 1, 2001.
8. In December, 2000, if all the couple's countable assets are awarded to the community spouse, her monthly income totaled \$1,533.20 and she still had a shortfall of \$569.80 from the minimum monthly needs allowance. In January, 2001, her income increased to \$1,548.70 and her shortfall increased to \$624.80.
9. In order to raise the community spouse to the minimum monthly needs allowance, income from the institutionalized spouse (petitioner) of \$569.80 (as of December, 2000) needs to be allocated to his community spouse, resulting in petitioner's cost share of \$259.28. As of January, 2001, the allocation should be increased to \$624.80 to the community spouse, resulting in the petitioner's cost share of \$222.28.

## **DISCUSSION**

The federal Medicaid Catastrophic Coverage Act of 1988 (MCAA) included extensive changes in state Medicaid (MA) eligibility determinations related to spousal impoverishment. In such cases an "institutionalized spouse" resides in a nursing home or in the community pursuant to MA Waiver eligibility, and that person has a "community spouse" who is not institutionalized or eligible for MA Waiver services. Wis. Stat. §49.455(1).

The MCAA established a new "minimum monthly needs allowance" for the community spouse at a specified percentage of the federal poverty line. This amount is the amount of income considered necessary to maintain the community spouse in the community. After the institutionalized spouse is found eligible, the community spouse may, however, prove through the fair hearing process that he or she has financial need above the "minimum monthly needs allowance" based upon exceptional circumstances resulting in financial duress. Wis. Stat. §49.455(4)(a).

When initially determining whether an institutionalized spouse is eligible for MA, county agencies are required to review the combined assets of the institutionalized spouse and the community spouse. MA Handbook, Appendix 23.4.0. All available assets owned by the couple are to be considered. Homestead

property, one vehicle, and anything set aside for burial are exempt from the determination. The couple's total non-exempt assets then are compared to the "asset allowance" to determine eligibility.

The county determined that the current asset allowance for this couple is \$84,120.00. See the MA Handbook, App. 23.4.2, which is based upon Wis. Stat. §49.455(6)(b). \$2,000 (the MA asset limit for the institutionalized individual) is then added to the asset allowance to determine the asset limit under spousal impoverishment policy. If the couple's assets are at or below the determined asset limit, the institutionalized spouse is eligible for MA. If the assets exceed the above amount, as a general rule the spouse is not MA eligible.

As an exception to this general rule, assets above the allowance may be retained as determined through the fair hearing process, if income-producing assets exceeding the asset limit are necessary to raise the community spouse's monthly income to the minimum monthly needs allowance. The minimum monthly maintenance needs allowance in this case is \$1,875 plus excess shelter allowance or \$2,103.00. MA Handbook, Appendix 23.6.0 (5-1-00). As of January 1, 2001, the minimum monthly maintenance needs allowance is the lesser of \$2,175 or \$1,875 plus excess shelter costs. *MA Handbook*, Appendix 23.6.0. Excess shelter costs are shelter costs above \$562.50. *Id*

Wis. Stat. §49.455(6)(b)3 explains this process, and subsection (8)(d) provides in its pertinent part as follows:

If either spouse establishes at a fair hearing that the community spouse resource allowance determined under sub. (6)(b) without a fair hearing does not generate enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c), the department shall establish an amount to be used under sub. (6)(b)3 that results in a community spouse resource allowance that generates enough income to raise the community spouse's income to the minimum monthly maintenance needs allowance under sub. (4)(c).

Based upon the above, a hearing examiner can override the mandated asset allowance by determining assets in excess of the allowance are necessary to generate income up to the minimum monthly maintenance needs allowance for the community spouse. Therefore, the above provision has been interpreted to grant a hearing examiner the authority to determine an applicant eligible for MA even if a spousal impoverishment application was initially denied based upon the fact the combined assets of the couple exceeded the spousal impoverishment asset limit.

Subsection (8)(d) quoted above includes a final sentence that requires the institutionalized spouse to make his or her income available to the community spouse before the assets are allocated. However, the Wisconsin Court of Appeals, in Blumer v. DHFS, 2000 WI App 150, 237 Wis. 2d 810, \_\_ N.W. 2d \_\_, concluded that the final sentence violated the mandate of the federal MCCA law. The Blumer court held that the hearing examiner first must allocate resources to maximize the community spouse's income, and only if the resources' income does not bring the community spouse's income up to the monthly minimum can the institutionalized spouse's income be allocated. The Blumer decision is on appeal to the United States Supreme Court, but currently it is the law that must be followed.

The result in this case is as follows. Petitioner's wife's monthly income was \$430.50. Allocating all the couple's countable assets to the community spouse only increases her total monthly income to \$1,533.20 ((\$1,548.70 as of January, 2001). Since the total still is below \$1,875 plus the excess shelter costs, the petitioner's wife is entitled to an income allocation from the petitioner of \$569.80 (increases to \$624 as of January, 2001). The petitioner's cost share would then be reduced to \$259.28 for December, 2000 and then be reduced to \$222.28 as of January, 2001.

### **CONCLUSIONS OF LAW**

1. All of the non-exempt assets of petitioner and his wife must be allocated to his wife to maximize her monthly income.
2. The petitioner's wife is entitled to an allocation of petitioner's income to raise her income to the minimum monthly needs allowance.

**NOW, THEREFORE, it is**

**ORDERED**

That the matter is remanded to the county with instructions to allocate all of the couple's non-exempt assets to the community spouse and to allocate income from the petitioner to his wife to raise the community spouse to the monthly minimum needs allowance, within 10 days of the date of this Decision.

### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence which would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one). The appeal must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this \_\_\_\_\_ day  
of \_\_\_\_\_, 2001.

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Gary M. Wolkstein  
Administrative Law Judge  
Division of Hearings and Appeals  
5-5-2001gmw

cc: Columbia County DHS  
DHFS – Susan Wood